

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE RICHARD M. OSBORNE
Debtor

CASE No. 17-17361
CHAPTER 11
JUDGE ARTHUR I. HARRIS

**MOTION OF RICHARD M. OSBORNE TO REQUIRE ZACHARY B. BURKONS TO APPEAR AND
SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT AND OTHER RELIEF**

Richard M. Osborne, Debtor in Possession (“Debtor”) moves the Court to enter an order pursuant to 11 U.S.C. §362 directing Zachary B. Burkons (“Burkons”) to appear before this Court and show cause why he should not be held in contempt for an intentional violation of the automatic stay.

1. Debtor filed this Bankruptcy Case on December 17, 2017 and has continued to operate as Debtor in Possession since that date. No committee of unsecured creditors has been established in this case. Burkons has at all times been a participant or in attendance at hearings in this bankruptcy case with his counsel and was given notice of its commencement.
2. On or about February 22, 2018 First National Bank of Pennsylvania filed its Motion of First National Bank of Pennsylvania for Relief from Stay and Abandonment [Doc. 49] (“MFRSA” and “FNB”) seeking relief from the automatic stay and abandonment from the estate of certain properties set forth in the Motion.
3. On or about April 16, 2018 at 8:50 AM EDT the Court docketed its Order granting in part FNB’s Motion [Doc. 108] (“Order”) as to certain properties set forth in the Order (the “Properties”).
4. Despite having direct notice of this bankruptcy case, and being represented by counsel in it, on or about April 16, 2018 at 10:00 AM EDT Burkons commenced contacting tenants in the Properties and placing for sale signs on them. The Debtor was flooded with calls from tenants and had no time or notice to make an orderly transition of the Properties.

5. Pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) “[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Motion did not seek, and the Order does not “order otherwise.” Therefore the Order is stayed until April 30, 2018, and the relief from the stay is not granted until that date.

6. Burkons has therefore engaged in a knowing, deliberate and intentional violation of the automatic stay.

7. Further Burkons never moved for relief from the automatic stay, FNB did. Presumably Burkons is acting at FNB’s request in attempting to administer the Properties. While the Debtor does not at this time seek an order to show cause against FNB, he reserves his right to do so should later investigation show that such an action is warranted.

Therefore, the Debtor respectfully requests that this Court set a hearing and direct Burkons to appear and show cause to this Court why he should not be held in contempt for a deliberate violation of the automatic stay, and if he is unable to satisfy this Court that an appropriate sanction on Burkons be imposed including an award of attorney’s fees for the prosecution of this Motion.

Respectfully submitted,
/s/ Frederic P. Schwieg, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Show Cause was electronically transmitted on or about the date filed via the Court’s CM/ECF system to the following who are listed on the Court’s Electronic Mail Notice list or was served by U.S. mail, postage prepaid, or certified mail on the persons below as indicated below.

Electronic Mail Notice List

The following is a list of the parties who are on the list to receive e-mail notice/service for this case:

Gregory P. Amend on behalf of Creditor First National Bank of Pennsylvania
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